

ORIGINAL

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
)
Applications for Consent to the Transfer)
of Control of licenses and Section 214)
Authorization from)
)
)
AMERITECH CORPORATION,)
Transferor)
)
to)
)
SBC COMMUNICATIONS INC.,)
Transferee)

RECEIVED**JUL 19 1999**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket 98-141

**Comments of
Metromedia Fiber Network Services, Inc.**

Metromedia Fiber Network Services, Inc. ("MFN"), through counsel,
hereby files its comments in the above-captioned proceeding.

Introduction

MFN is a competitive provider of optical local, exchange access, and interexchange private line services throughout the nation. MFN's business is focused on providing high-bandwidth, fiber optic communications infrastructure and services to communications carriers and corporate/government customers. MFN currently operates high-bandwidth fiber optic communications networks in New York, and within the next two quarters, MFN expects to begin operating similar networks in Philadelphia and Washington, DC. MFN also has begun engineering and constructing networks in Chicago, San Francisco, and Boston. Within the next two years MFN plans to complete

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an expansion into five additional markets, including Atlanta, Dallas, Houston, Los Angeles, and Seattle. Upon completion, MFN expects that its domestic intra-city networks will encompass approximately 810,000 fiber miles covering approximately 1,896 route miles.

MFN intends to compete directly with incumbent local exchange carriers ("ILECs") in the provision of interoffice transmission to competitive local exchange carriers ("CLECs") and others. Doing so requires that MFN have ready access to all ILEC central offices – end offices and tandems – to provide a competitive alternative to ILEC transport. To obtain this access, MFN has negotiated an industry-first agreement with Bell Atlantic that enables MFN to extend its dark fiber directly to a universally accessible distribution point within all Bell Atlantic central offices, including those that have reached physical space exhaustion, without having to meet previous requirements of "lighting" (with optical-electrical conversion equipment) fiber pulled by MFN into Bell Atlantic central offices. This new form of central office access, called Competitive Alternate Transport Terminal ("CATT") connectivity, allows MFN to use its fiber distribution points to provide CLECs a competitive choice for interoffice transport throughout the Bell Atlantic region.¹

MFN has attempted to negotiate similar CATT arrangements with SBC and Ameritech. In spite of the fact that the CATT is a technically feasible means of central office access currently offered by Bell Atlantic, neither SBC nor Ameritech has agreed to provide MFN with CATT connectivity. To overcome SBC's and Ameritech's

¹ A joint press release by Metromedia and Bell Atlantic describing the CATT arrangement is attached hereto as Exhibit A.

refusal to provide CATT connectivity, MFN submits that the Commission should, as part of the merger conditions:

- (1) declare CATT connectivity a collocation “best practice” that SBC-Ameritech must provide to MFN and others;
- (2) clarify that under the “most-favored-nation” provision of the SBC-Ameritech merger conditions, the combined company must make available region-wide any negotiated or arbitrated unbundling/interconnection arrangement provided by the SBC-Ameritech ILEC in any state or made available to any SBC-Ameritech CLEC affiliate in any state.

By taking these actions, the Commission will ensure that SBC-Ameritech markets have an opportunity to become “the most open and competitive in the country.”²

I. The Commission Should Declare CATT Connectivity a Collocation “Best Practice” that Must Be Made Available by SBC-Ameritech

MFN submits that the Commission should adopt CATT connectivity as a collocation best practice and require SBC-Ameritech to provide the CATT throughout its region. In so doing, the Commission would open the door to competitors, such as MFN, that wish to provide CLECs with immediate and unrestricted interoffice transport connectivity – to end offices as well as tandem offices – throughout the SBC-Ameritech region.

The Commission’s *706 Collocation Order*³ has made it possible for competition to move from the access tandem to the end office in a more efficient and

² CC Docket 98-141, *Ex Parte Presentation of SBC Corp. and Ameritech Corp.* at 2 (July 2, 1999).

³ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of

cost-effective manner. CLECs are purchasing and conditioning dark copper loops with ATM, DSL, and other bandwidth-intensive applications to benefit residential and small business customers. CLECs investing in these applications, which enhance the throughput of bottleneck loop facilities, need ready access to high-capacity interoffice transport from all ILEC central offices, including end offices. Dark fiber is the interoffice transmission medium of choice for these bandwidth-hungry applications. However, existing ILEC practices have slowed the deployment of competitive interoffice transmission capabilities, especially deployment to smaller end offices. To ensure that competition moves from the tandem office to the central office, CLECs need assurances that they will have ready-access to competitive interoffice transport to any and all central offices, including small end offices, and this exactly what CATT provides.

A. CATT connectivity will encourage the development of a competitive interoffice transport market

Traditional ILEC collocation and cross-connect services were designed to permit CLECs to interconnect with one another or to utilize existing ILEC-provided interoffice transport. Previous collocation rules required that competitors light their fiber with traditional optical-electrical time-division-multiplexing equipment, where dark fiber was not available as an unbundled network element ("UNE"). As a result of these expenses, collocation services historically have been deployed in only the largest ILEC access tandems and end offices serving large business districts. With today's technology,

Proposed Rulemaking, FCC 99-48, ¶ 45 (rel. March 31, 1999) ("*706 Collocation Order*").

these expenditures are totally unnecessary, and serve only to create an artificial barrier to entry.

By way of example, where dark fiber is considered a UNE, like Texas, competitors are not required to light fiber.⁴ In other jurisdictions, ILECs require CLECs to light all fiber pulled into central offices, even though no technical reason exists for this distinction. To deny this capability to MFN – based on an ILEC's determination as to whether to offer dark fiber – is completely arbitrary.

CATT connectivity was created by MFN and Bell Atlantic in order to facilitate the provision of competitive interoffice transport from all central offices, including those that serve primarily residential and small business customers. With the CATT, MFN has the ability to build fiber rings that pass through Bell Atlantic central offices without requiring MFN to physically collocate optical-electrical conversion equipment in the central offices served. During fiber ring construction, the CATT arrangement permits MFN to pull up to 432 fibers into a central office via a specified manhole. This fiber can then be distributed on an as-needed basis to collocated CLECs as a competitive alternative to Bell Atlantic interoffice transport. A diagram depicting a CATT arrangement is attached hereto as Exhibit C.

⁴ See, e.g., letter from J.O. Krzesinski of Southwestern Bell Telephone to Robert Riordan of Metromedia dated July 15, 1999, attached hereto as Exhibit B.

While the CATT arrangement will permit MFN to provide competitive interoffice transport services throughout the Bell Atlantic footprint,⁵ and allow any SBC-Ameritech CLEC to use this offering, the SBC and Ameritech ILECs have thus far refused to provide CATT connectivity to MFN. To encourage the development of a robustly competitive interoffice transport market, the Commission should require SBC-Ameritech to provide CATT connectivity throughout their combined territory.

B. Because CATT connectivity is a technically feasible means of accessing ILEC central offices, the Commission should require SBC-Ameritech to provide the CATT pursuant to the Commission's collocation rules

In its *706 Collocation Order*, the Commission held that "deployment by any incumbent LEC of a collocation arrangement gives rise to a rebuttable presumption ... that such an arrangement is technically feasible."⁶ As the Commission explained:

[A] presumption of technical feasibility, we find, will encourage all LECs to explore a wide variety of collocation arrangements and to make such arrangements available in a reasonable and timely fashion. We believe that this "best practices approach" will promote competition.⁷

The CATT is a technically feasible means by which competitors can enter ILEC central offices to provide competitive services, such as interoffice transport. This offering will make virtually unlimited bandwidth available to all carriers (including Bell Atlantic)

⁵ See attached Exhibit D.

⁶ *706 Collocation Order* at ¶ 45.

⁷ *Id.*

throughout the Bell Atlantic region for the first time ever. Thus the Commission should endorse CATT as a technically feasible best practice throughout the SBC-Ameritech footprint, pursuant to the Communications Act's collocation provision,⁸ which applies equally to 251(a)(1) and 251(c)(2) interconnection.

Outside of the Bell Atlantic service territory, the cost of providing connectivity functionally equivalent to CATT is made needlessly more expensive due to the cost of collocating the optical-electrical conversion equipment necessary when dark fiber is not offered by the incumbent as a UNE.⁹ This arbitrary ILEC collocation requirement violates the Commission's *706 Collocation Order* and is at odds with the Commission's desire to move competition from the tandem office to the end office. As such, the Commission should adopt CATT as a best practice and require SBC-Ameritech to make CATT connectivity available throughout its region as a technically feasible means of entering SBC-Ameritech central offices.

II. The Commission Should Broaden the Scope of the "Most-Favored-Nation" Provision of the SBC-Ameritech Merger Conditions

In its proposed merger conditions, SBC-Ameritech offers two basic most-favored-nation provisions:

(1) for out-of-region arrangements, the SBC-Ameritech ILEC will offer to CLECs within its own territory any UNE or interconnection arrangement

⁸ 47 U.S.C. § 251(c)(6).

⁹ Indeed, even in states, such as Texas, where dark fiber is available as a UNE, it is unclear whether SBC will agree to CATT-like arrangements.

that any SBC-Ameritech CLEC affiliate requests and obtains by arbitration out of region and

(2) for in-region arrangements, the SBC-Ameritech ILEC will offer to CLECs throughout the combined region any voluntarily negotiated terms for interconnection arrangements or UNEs that are made available under any agreement approved after the merger closes.¹⁰

Both of these most-favored-nation provisions permit SBC-Ameritech to dictate the terms and conditions of arrangements made available to CLECs, and as a result, these “conditions,” as drafted, are nothing more than dead letters. Only by requiring SBC-Ameritech to offer any negotiated or arbitrated interconnection arrangement provided by SBC-Ameritech or made available to SBC-Ameritech CLEC affiliates will the Commission adequately encourage competition both within and outside of the combined region.

Take CATT connectivity, for example. An SBC-Ameritech CLEC could avail itself of CATT connectivity throughout the Bell Atlantic region to compete with MFN and others in the interoffice transport market. MFN, however, would not have the availability of the CATT to compete with the SBC-Ameritech ILEC in the provision of interoffice transport within the SBC-Ameritech region, unless SBC-Ameritech voluntarily agreed to permit MFN to do so. Even if MFN obtained CATT connectivity from SBC-Ameritech through arbitration in one state, SBC-Ameritech would still be under no obligation to provide CATT connectivity in other SBC-Ameritech states. Thus, as drafted, the most-favored-nation provisions of the SBC-Ameritech proposed merger conditions allow the SBC-Ameritech CLEC to compete against MFN, but forecloses

MFN from competing against the SBC-Ameritech ILEC for things like interoffice transport.

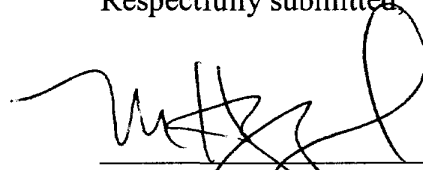
To give meaning to the most-favored-nation provisions, the Commission should require the SBC-Ameritech ILEC to offer region-wide: (1) any UNE or interconnection term available to any SBC-Ameritech CLEC and (2) any UNE or interconnection term made available to any CLEC within the SBC-Ameritech territory. Creating such an obligation would serve as a foundation for making the SBC-Ameritech states the most open to competition. For MFN, creating such a most-favored-nation obligation would allow MFN to provide competitive interoffice transmission throughout the SBC-Ameritech region in the same way that MFN can provide competitive interoffice transmission in the Bell Atlantic region. In sum, if the merger conditions' most-favored-nation provision is to be of any import at all, it must provide CLECs competing with the SBC-Ameritech ILEC with the same competitive opportunities available to the SBC-Ameritech CLEC.

¹⁰ CC Docket 98-141, *Proposed Conditions for FCC Order Approving SBC/Ameritech Merger*, 28 (July 2, 1999).

Conclusion

Consistent with the discussion herein, the Commission should: (1) declare that SBC-Ameritech must offer CATT connectivity throughout its region in accordance with the Commission's collocation rules and (2) require that any most-favored-nation provision provides CLECs competing with the Ameritech-SBC ILEC with the same opportunity to compete as any SBC-Ameritech CLEC.

Respectfully submitted,



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COUNSEL FOR METROMEDIA FIBER
NETWORK SERVICES, INC.

Dated: July 19, 1999



Exhibit A

BW0168 JUN 14, 1999

5:43 PACIFIC

08:43 EASTERN

(BW)(NY-METROMEDIA-FIBER-NTWK)(MFNX) Bell Atlantic and Metromedia Fiber Network Reach Landmark Agreement to Facilitate Fiber Distribution in Bell Atlantic Central Offices

Business & Hi-Tech Editors

NEW YORK--(BUSINESS WIRE)--June 14, 1999--

Agreement Will Provide CLEC Customers with Rapid and Cost-Effective Dark Fiber Connectivity Inside Bell Atlantic Central Offices

Metromedia Fiber Network, Inc. (NASDAQ: MFNX) and Bell Atlantic (NYSE: BEL) have signed an unprecedented agreement that enables Metromedia Fiber Network (MFN) to implement dark fiber connectivity within all Bell Atlantic central offices.

This industry-first accord provides a fast, efficient way for competitive local exchange carriers (CLECs) to enter the local telecommunications market by allowing these CLECs to utilize MFN's fiber to connect directly to Bell Atlantic's network or another CLEC's network.

Under the agreement, Metromedia Fiber Network will install hundreds of 'dark fibers' in Bell Atlantic's equipment buildings (central offices or COs) but will not be required to locate the lines in a separate area known as a collocation cage or space. Dark fibers are fiber optic strands that provide virtually unlimited bandwidth for the transmission of data, video, voice and multi-media communications services.

This innovative arrangement, jointly developed by Metromedia Fiber Network and Bell Atlantic, is a first between a regional Bell company and a fiber provider. Never before has a non-incumbent local exchange carrier been able to deploy an inventory of fiber lines in an incumbent's CO without having to lease a collocation cage or space. MFN will now be able to pull a single, high-capacity cable to a universally accessible distribution point within Bell Atlantic's portion of a central office and sell the lines directly and efficiently to CLECs and other carrier customers.

Bell Atlantic and Metromedia Fiber Network will conduct an initial trial of the service in five Bell Atlantic central offices in New York City. Upon successful completion of the trial, MFN plans to offer connections in more than 100 Bell Atlantic COs in New York, Philadelphia, Washington, D.C. and Boston as well as in key COs and tandem switching centers within the Boston to Washington, D.C. corridor. MFN also plans to eventually expand fiber optic infrastructure availability in other central offices in Bell Atlantic's region.

"We're extremely excited by this agreement with Bell Atlantic," said Howard Finkelstein, president of Metromedia Fiber Network. "It creates a framework that complements Metromedia Fiber Network's business strategy of becoming the infrastructure provider of choice for CLECs, DSL providers, ISPs and other carriers competing in the dynamic communications marketplace.

"The scope of the new opportunity is significant because of what it has created for carrier customers and because it creates a model for the creation of fiber connectivity to central offices throughout the country," added Finkelstein.

With Metromedia Fiber Network's high fiber count optical infrastructure available in key central offices, CLECs will gain immediate, unrestricted and unmetered bandwidth connectivity in these vital

communications centers, further increasing time to market and cost advantages.

According to Jack Goldberg, president of Bell Atlantic's Telecom Industry Services, "the innovative service enables fiber providers to quickly and cost effectively compete with Bell Atlantic to provide connections between central offices known as interoffice transport facilities.

"Our negotiations with Metromedia Fiber Network have resulted in an original solution that can serve as the foundation for direct fiber connectivity in Bell Atlantic central offices," said Goldberg. "This will not only provide more options for CLECs entering the market, but it will further promote the development and availability of cutting-edge communications packages that combine voice, video and data services."

Finkelstein said: "Our thanks go to the FCC as well as the New York State Public Service Commission and Bell Atlantic for working with us to make this agreement possible. The creative framework to which Bell Atlantic and Metromedia Fiber Network agreed was the result of over one year of steady negotiations and indicates a true commitment to increasing the competitive landscape of communications in the region."

About Bell Atlantic

Bell Atlantic is at the forefront of the new communications and information industry. With 43 million telephone access lines and nine million wireless customers worldwide, Bell Atlantic companies are premier providers of advanced wireline voice and data services, market leaders in wireless services and the world's largest publishers of directory information. Bell Atlantic companies are also among the world's largest investors in high-growth global communications markets, with operations and investments in 23 countries.

Internet Users:

Bell Atlantic news releases, executive speeches, news media contacts and other useful information are available at Bell Atlantic's News Center on the World Wide Web (<http://www.ba.com>). To receive news releases by email, visit the News Center and register for personalized automatic delivery of Bell Atlantic news releases.

About Metromedia Fiber Network

Metromedia Fiber Network is building metropolitan fiber optic infrastructure in the local loop in strategic Tier One markets, enabling technologically sophisticated organizations to implement the latest data, video, internet and multimedia applications. By offering virtually unlimited, unmetered bandwidth at a fixed cost, Metromedia Fiber Network is eliminating the bandwidth barrier and redefining the way broadband capacity is sold.

Utilizing Metromedia Fiber Network's infrastructure, customers are able to rapidly deploy state-of-the-art optical networks. Communications carriers and ISPs gain local loop connectivity to the most highly populated metropolitan areas. Corporate and government customers benefit from private building-to-building networks featuring the fastest transmission speeds available and the highest levels of reliability and security. In addition to its current expansion in 12 major North American cities, Metromedia Fiber Network is entering the international market with fiber optic network builds in Germany, and the provision of transatlantic bandwidth capacity. For more information about Metromedia Fiber Network, please visit the company's Web site at www.mmfn.com.

This news release contains certain forward-looking statements that involve risks and uncertainties. Factors that could cause or contribute to such risks and uncertainties include, but are not limited to, general economic and business conditions, competition, changes in technology and methods of marketing, and various other factors beyond the Company's control. This also includes such factors as described from time to time in the SEC reports filed by Metromedia Fiber Network, including the most recently filed Forms 10K and 10Q.



Exhibit B

JUL-15-1999 12:47

P.02/02

J.O. Kresinski
Lead Negotiator-
Local Provider Account Team

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Four Bell Plaza, 7th Floor
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Dallas, Texas 75202-5598
Phone 214 484-2447
Fax 214 484-1486
Email: jk3329@cmell.sbc.com



July 15, 1999

Mr. Robert Riordan
Director-LEC Relations
Metromedia Fiber Network Services, Inc.
One North Lexington Avenue, Fourth Floor
White Plains, NY 10601

Dear Mr. Riordan:

I enjoyed our conversation this morning and agree that we're moving forward in these negotiations. Outlined below is a brief recap of our discussion:

- The Texas Proposed Interconnection Agreement (PIA) is scheduled for action today by the Texas PUC. In its current draft form, the PIA contains provisions for a CLEC to purchase Unbundled Dedicated Transport via Dark Fiber for a period of two (2) years, along with specific related terms and conditions. It remains SWBT's position that the purchase of Unbundled Network Elements (UNEs), including Unbundled Dedicated Transport, is for the purpose of provisioning local exchange service to end users.
- SWBT has filed a revision to its Texas Collocation tariff which is also scheduled for action by the Texas PUC today or tomorrow. The draft revision reflects SWBT's compliance with the FCC's March 13, 1999 Order in FCC Docket 99-48, related to collocation.
- You agreed to review the specific language of each of the above and upon approval of either/both, provide Metromedia Fiber Network's decision on executing same with SWBT.
- Finally, in response to MFN's "split billing" issue - SWBT bills a CLEC for the UNEs it orders pursuant to the rates, terms and conditions of the Interconnection Agreement between the two parties. No billing by SWBT to any affected third party is processed.

Bob, as discussed, let's keep our "ears to the ground" and get back together as soon as the PIA and Collocation tariff are approved. I look forward to speaking with you again soon.

Sincerely,

A handwritten signature in cursive script that reads "J.O. Kresinski".

cc: Jeanne Hatfield

TOTAL P.02

Exhibit C

COMPETITIVE ALTERNATE TRANSPORT TERMINAL (CATT)

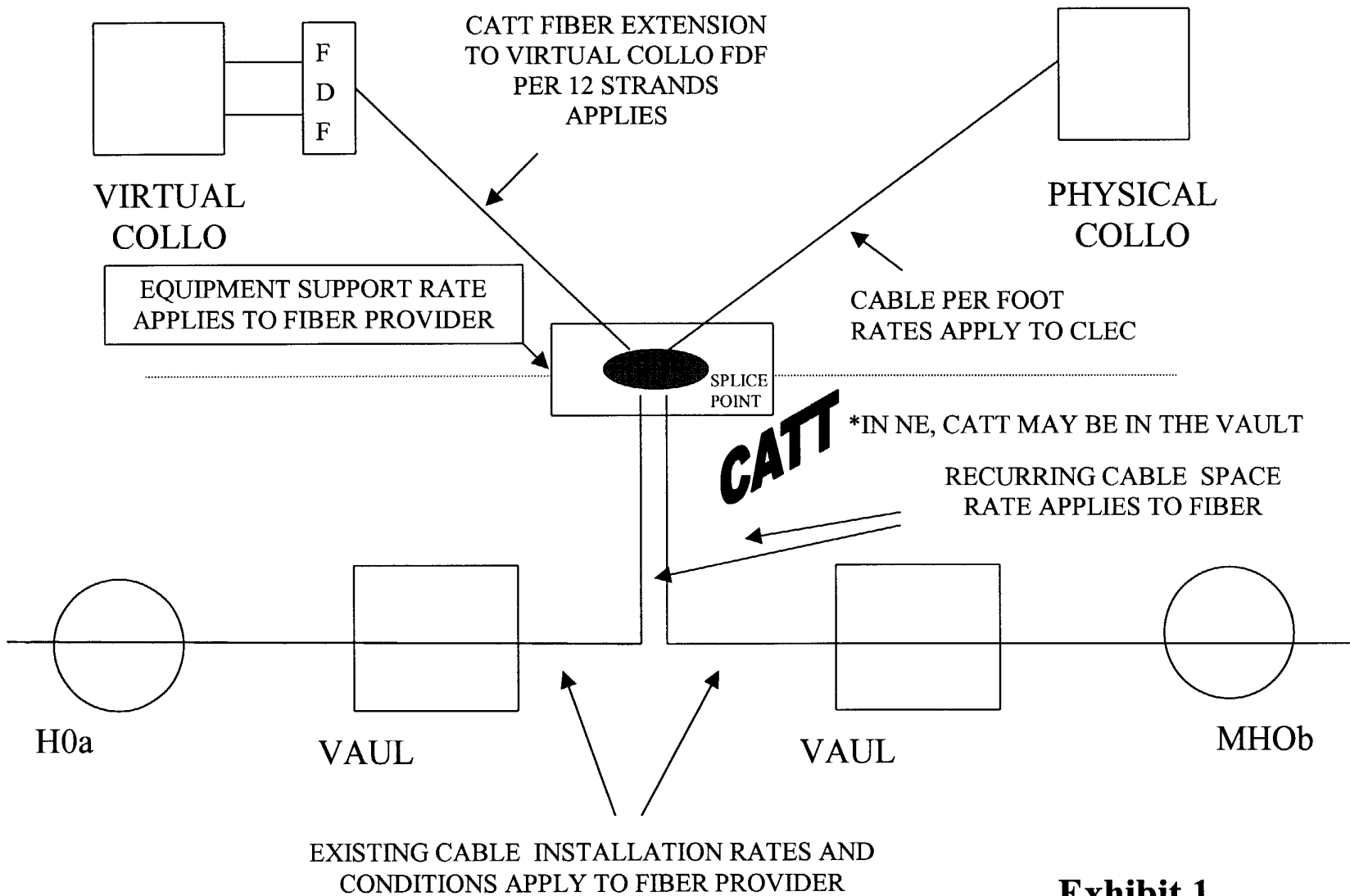


Exhibit 1

D



Exhibit D

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Comments of Metromedia Fiber Network Services, Inc.** were served via first-class mail on this 19th day of July, 1999 on the following:

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